IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 751 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SAIYED EJAZ AHMED @ CHOTA EJAZ - Appellant

Versus

STATE OF GUJARAT – Respondent

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Appearance :
MR ROHIT S VERMA WITH MS. NITYA RAMAKRISHNAN for the Appellant.
MR LR PUJARI, ADDITIONAL PUBLIC PROSECUTOR for the respondent.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 10/08/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal is preferred under Section 34 of the Prevention of Terrorism Act, 2002 (“POTA”, for short) as well as under Section 439 of Code of Criminal Procedure, 1973 against the judgment and order passed in Miscellaneous Criminal Application No. 2739 of 2005 in POTA Case No. 2 of 2004 dated 22nd September, 2005 by which the Special Court (POTA), Ahmedabad rejected the bail application of the appellant.

2. Ms. Nitya Ramakrishnan, learned Counsel representing the appellant, submitted that the appellant was arrested by the Crime Branch, Ahmedabad, by way of a Transfer Warrant from Hyderabad (A.P.) on 14-12-2003 in connection with the D.C.B. Police Station C.R. bearing No. I-6 of 2003 for the offences punishable under Sections 120B, 121, 121A, 122, 123 of Indian Penal Code, 1860; Sections 25 (1AA), 27 and 29 of the Arms Act, 1959; and Sections 3(1)(a)(b), 3(3), 4, 20, 21(2)(b), 22(3)(a)(b) of POTA, 2002 and at present, the appellant is in judicial custody. In pursuance of FIR lodged with the DCB Police Station, the provisions of POTA were subsequently invoked on 19-04-2003. As per the allegation against the appellant, he had allegedly travelled to Pakistan and acquired training in the use of various arms and ammunitions. On 10-09-2003,

the Investigating Agency i.e. Crime Branch, Ahmedabad filed a charge-sheet in DCB Case No. I-6 of 2003 against 39 accused and 45 absconding accused before the Special Court (POTA) at Ahmedabad. The said charge-sheet was numbered as POTA Case No. 12 of 2003 and the said case is pending trial before the learned Special Judge. The appellant was arrested on 14-12-2003 by the Crime Branch, Ahmedabad. The confessional statement of the appellant was recorded on 20-12-2003 under Section 32 of POTA. The learned Advocate representing the appellant further submitted that on bare reading of the confessional statement, the appellant reiterates the fact about his travelling to Pakistan in order to acquire training in the use of arms and ammunitions. The contents of confessional statement of the appellant shows that the same is in *pari materia* to the contents of the remand case diary report and the confession-cum-seizure *panchnama* recorded by Hyderabad Police in FIR bearing No. 169 of 2003 which was registered at Hyderabad. The learned Advocate submitted that the appellant moved an application for bail which was rejected by the learned Special Judge. As the judgment and order was not based on the material on record of the case, the appeal requires to be allowed and appellant be enlarged on bail. The appellant is in judicial custody for more than two years and, therefore, the rigour as contemplated under Section 49 (6) and (7) of POTA would not apply. The learned Advocate submitted that the ratio laid down while upholding the constitutional validity of Section 49

of POTA in case of **People's Union for Civil Liberties And Another Vs. Union of India, (2004) 9 SCC 580** ought to have been taken into consideration by the learned Special Judge in considering the bail application of the appellant. No incriminating material was recovered from the appellant and save and except his so-called confessional statement, there is nothing on the record to indicate the involvement of the appellant in the commission of crime. The confessional statement which was recorded under the provisions of Section 32 was in violation of sub-section (5) of the said section inasmuch as the appellant had refused to endorse his signature on the confessional statement and the same was not ratified by proper endorsement before the Magistrate as provided under sub-section (5) of Section 32. The appellant is a young student, having a bright academic career, which is evident from the discussion in the impugned judgment itself, and the said fact and circumstances were overlooked by the learned Judge in rejecting the bail application preferred by him. The learned Advocate further submitted that taking into account the nature of involvement of the appellant, the role attributed to the appellant in the commission of crime, and the material available against the appellant, it is a fit case to enlarge the appellant on regular bail on terms and conditions which the Hon'ble Court may deem fit and proper.

3. The learned Counsel placed reliance on the following judgments in support of the submissions

canvassed at the bar:

(i) **Madhavrao Jiwaji Rao Scindia and Another Vs. Sambhajirao Chandrojirao Angre and Others; AIR 1988 SC 922;**

(ii) **Shaheen Welfare Association Vs. Union of India and Others, (1996) 2 SCC 616;** and

(iii) **State (NCT) of Delhi Vs. Navjot Sandhu Alias Afsan Guru, (2005) 11 SCC 600.**

4. Mr. L. R. Pujari, learned Additional Public Prosecutor representing the State, submitted that statement of the appellant was recorded under Section 32 of the POTA and the statement of his father was recorded under Section 164 of the Code of Criminal Procedure. Considering the statements of the appellant and his father, the appellant cannot be released on regular bail. The learned Additional Public Prosecutor contended that the POTA Court has assigned sufficient reasons while rejecting the bail application preferred by the appellant and the order passed by the learned Special Judge does not call for any interference in an appeal preferred by the appellant. The learned Additional Public Prosecutor further submitted that taking into account the gravity of the offence and the role attributed to the appellant, the appellant cannot be enlarged on bail. The learned Additional Public Prosecutor has placed reliance on the following judgments: (1) **State of Maharashtra Vs. Sitaram Popat Vetal and Another, (2004) 7 SCC 521;** and (2) **Kalyan Chandra Sarkar Vs.**

Rajesh Ranjan Alias Pappu Yadav And Another, (2004) 7 SCC 528. These judgments are cited by the learned Additional Public Prosecutor in support of the submission as to what factors are required to be taken into account by the Court while deciding the bail application. Thus, it is contended by the learned Additional Public Prosecutor that the ratio laid down by the Apex Court would apply to the facts of the case and as no case is made out by the appellant for the grant of appeal, the appeal preferred by the appellant is liable to be dismissed.

5. This Court has heard Ms. Nitya Ramakrishnan, learned Counsel for the appellant-accused, and Mr. L. R. Pujari, learned Additional Public Prosecutor for the respondent-State, at length and in great detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record.

6. We have carefully considered the judgments cited by the learned Advocates of both the sides. In our opinion, the proposition of law laid down in those judgments or the ratio is not disputed.

7. The appellant came to be arrested in connection with I-CR bearing No. 6 of 2003 which was registered with the DCB Police Station for his alleged involvement in the offences punishable under Sections 120B, 121, 121A, 122, 123 of Indian Penal Code, 1860; Sections 25 (1AA), 27 and 29 of the Arms

Act, 1959; and Sections 3(1)(a)(b), 3(3), 4, 20, 21(2)(b), 22(3)(a)(b) of POTA, 2002. It is pertinent to note that the appellant had preferred earlier bail application bearing No. Criminal Miscellaneous Application No. 1010 of 2004 and it was rejected on 24-06-2004. Thereafter, an appeal was preferred by the appellant under Section 34 of the POTA and it was withdrawn with a view to move an application for bail as the period of one year had expired from the date of his arrest i.e. 04-12-2003 and, therefore, he had preferred the application bearing No. 2739 of 2005 before the learned Special Judge. The confessional statement of the accused who was arrested was recorded under Section 32 of the POTA and the statement of the father of the appellant was recorded under Section 164 of the Code of Criminal Procedure. As per the prosecution case, the appellant along with others went to Pakistan in order to take training in the use of various arms and ammunitions and the said fact has been revealed in the confessional statement by the appellant. The father of the appellant gave the statement under Section 164 of the Code of Criminal Procedure, stating therein that he had gone for taking training to Pakistan under the pretext of going to Dubai. It is also pertinent to note that the appellant is also involved in another case bearing C.R. No. I-169 of 2003 which was registered at Hyderabad. Thus, on perusal of the record of the case, it speaks volumes of the appellant's *prima facie* involvement in nefarious activities, which, in our view, would have deleterious effect on the

society if he is enlarged on bail. We have taken into consideration the fact that the appellant is also involved in criminal conspiracy and provisions of Section 120B, 121, 121A, 122 and 123 of IPC are invoked. When an accused is involved in a criminal conspiracy along with other persons, then it would not, in our view, be just and proper to release him on bail. Thus, taking into consideration the gravity of the offence, the nature of *prima facie* involvement of the appellant in the commission of offence and the sentence which is likely to be imposed on the appellant, if convicted, we are of the view that the appellant cannot be enlarged on bail, as prayed for in the appeal. Hence, the appeal is liable to be rejected.

8. For the foregoing reasons, we pass the following order:

O R D E R

The appeal fails and is rejected.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

/shamnath